

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for)
Termination of Probation of:)**

RITO CASTANON-HILL, M.D.)

Case No. 8002016020676

**Physician's and Surgeon's)
Certificate No. A71843)**

OAH No. 2016070615

**Respondent)
_____)**

DECISION

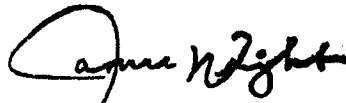
The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 18, 2016.

IT IS SO ORDERED October 21, 2016.

MEDICAL BOARD OF CALIFORNIA

By: _____



**Jamie Wright, J.D., Chair
Panel A**

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Termination
of Probation of:

RITO CASTANON-HILL, M.D.,

Physician's and Surgeon's Certificate
Number A 71843.

Petitioner.

Case No. 800-2016-020676

OAH No. 2016070615

PROPOSED DECISION

Administrative Law Judge Carla L. Garrett heard this matter on September 16, 2016, at Los Angeles, California.

Tracy Green, Attorney at Law, represented Rito Castanon Hill, M.D. (Petitioner).

Wendy Widlus, Deputy Attorney General, appeared pursuant to the provisions of Government Code section 11522.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 71843 to Petitioner on June 1, 2000. The certificate is renewed and current with an expiration date of August 31, 2017.

2. By its Decision effective October 21, 2011, the Board revoked the certificate, stayed the revocation and placed Petitioner on probation for a period of seven years on terms and conditions including an actual suspension of 30 days, completion of ethics courses, and supervision by a billing monitor.

3. The Board based its discipline on Petitioner's 2008 conviction of conspiring with or aiding and abetting another in the unlicensed practice of medicine in violation of Business and Professions Code section 2052, subdivision (b), a felony; and one count of receiving stolen property in violation of Penal Code section 496, subdivision (a), a felony.

4. The facts and circumstances underlying the conviction stemmed from Petitioner's decision to become a supervising physician at a clinic in September 2003, immediately following his residency. Petitioner typically came into the clinic once or twice per week and examined one or two patients per visit.¹ The patients at the clinic were almost exclusively Medicare patients. Approximately two or three months after he started working at the clinic, Petitioner realized the clinic's physician assistant and other staff were ordering too many tests for patients, and that all of the work-ups began looking the same. Many of the patients were getting the same tests, and most of these tests yielded negative results. However, because he was earning so much money, Petitioner initially ignored the situation. After a while, Petitioner could no longer ignore this practice and concluded the clinic was "ripping off the system." Consequently, in May 2004, Petitioner resigned from the clinic, because he knew that, as the supervising physician, his name was on the bills sent to Medicare for payment. By Petitioner's estimate, he had grossed at least \$250,000 from the bills sent to Medicare while he was at the clinic.

5. Approximately two and one-half years later, Petitioner was arrested pursuant to a criminal complaint alleging Petitioner committed health benefits fraud, grand theft, money laundering, conspiring with aiding or abetting another in the unlicensed practice of medicine, and receiving stolen property. Petitioner, pursuant to a plea agreement, pled guilty to conspiring with or aiding and abetting another in the unlicensed practice of medicine in violation of Business and Professions Code section 2052, subdivision (b), a felony; and one count of receiving stolen property in violation of Penal Code section 496, subdivision (a), a felony. Petitioner agreed to cooperate with authorities to convict five other defendants in connection with the clinic and its activities.

6. The court placed Petitioner on formal probation for five years and, among other things, ordered Petitioner to serve five days in jail, pay \$250,000 to the Centers for Medicare & Medicaid Services through the probation department, and pay fines, fees, and assessments. Petitioner was also prohibited from acting as a service provider for Medicare, Medi-Cal, or Medicaid.

7. Petitioner leveraged his home to pay \$250,000 to the Centers for Medicare & Medicaid Services, as well as pay the fines, fees, and assessments. Additionally, Petitioner complied with all other terms of his criminal probation. Consequently, on October 2, 2015, the court reduced Petitioner's felonies to misdemeanors, and then dismissed Petitioner's convictions, pursuant to Penal Code section 17, subdivision (b).

¹ Petitioner also worked elsewhere as an emergency room physician.

8. For nearly five years, Petitioner has scrupulously complied with all probationary terms imposed by the Board, while simultaneously founding and working at his own urgent care facility, Hollywood Walk-In Clinic. He completed the ethics courses and has worked closely with his billing monitor who found no evidence demonstrating Petitioner engaged in any subpar billing practices at his clinic. Additionally, Petitioner has spent considerable time educating himself about the business of medicine and billing protocol.

9. The Board's probation has served Petitioner well. The entire experience forced Petitioner to learn a great deal about the business of medicine and it has helped him to improve his practice. It forced him to take a good look at himself and accept responsibility for his role in defrauding the Medicare system through his actions or inaction. Petitioner has learned to be less naïve and more cautious. In that regard, Petitioner has shared his missteps with others in an effort to help them avoid the same pitfalls.

10. Petitioner would like to return to emergency medicine as a physician in a hospital setting. In that regard, he has maintained his professional skills and education, and continues to be certified by the American Board Emergency Medicine by completing his required yearly Lifelong Learning and Assessment Exams. Additionally, Petitioner would like to return to Army service as a reserve officer to train medics for combat duty.

11. In support of the Petition, Petitioner submitted a letter from Jennifer Stever, D.O., who works with Petitioner at Hollywood Walk-In Clinic. Dr. Stever is a Board-Certified Emergency Medicine physician and Fellow of the American College of Emergency Physicians. Dr. Stever wrote, in part:

I believe that [Petitioner's] struggles allow him to be a more compassionate, understanding physician in addition to having excellent medical skills and training. He is very clear and helpful toward the staff and patients, without altering boundaries or compromising the relationships he has with the staff or patients. He has proven himself to be a credit to his profession and his community.

[¶] ... [¶]

I am honored to work alongside [Petitioner] and fully support his petition for early termination of his probation. [Petitioner] has proven himself to be a responsible, safe physician and, without a doubt, I do not feel that he is a danger to the public.

12. Dr. Justin Young, M.D., who is also employed at Hollywood Walk-In Clinic, wrote the following on Petitioner's behalf:

Over the past 2 years, I have watched as the clinic has grown and seen how important it has been for [Petitioner] to maintain a work environment that is safe, supportive, and efficient. It is clear that he has learned from past

experiences and had done a lot to make sure those unfortunate setbacks are not repeated in any way. He has worked hard to develop a staff that he has personally trained and trusts with clinic protocols and support structures to ensure proper operation to the standards of the Medical Board.

[§] ... [§]

I am not aware of any information from any source that would cause me to believe that [Petitioner] would not perform the duties of a professional physician competently or ethically. I fully believe that [Petitioner] will act in accordance with the standards of competency and professionalism expected by the Board and it is my hope that this clarifies, without reservation, why his release from probation should be looked upon favorably and approved.

13. Petitioner submitted a letter from Deonza Thymes, M.D., MPH, who is a Board-Certified Emergency Medicine physician, and who works at Hollywood Walk-In Clinic. Dr. Thymes wrote, in part:

Petitioner is a friend as well as a professional colleague. He entrusted me with knowledge of the events that led the Medical Board of California to place him on probation in October 2011. I am also aware of his tireless efforts to redeem himself in the eyes of the Board. [Petitioner] has taken great care to meet and exceed the requirements and expectation of the Board.

[§] ... [§]

[Petitioner] is one of the most intelligent and skilled physicians I have encountered in my career. I do not have any reservations in supporting his request to be released from his probation at this time.

14. Based on all of the evidence adduced at the hearing, it is found that the chance of any “recidivism” by Petitioner is very low. The public interest would not be put at risk by terminating his probation one year before it is due to expire by its own terms.

CONCLUSIONS OF LAW

Statutory Authority

1. Business and Professions Code section 2307 provides, in part:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition

the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

Regulatory Authority

2. California Code of Regulations, title 16, section 1360.2 provides in part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).
- (d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

The Burden and Standard of Proof

3. In a proceeding to restore a disciplined professional license or a petition for penalty relief, the burden rests on the petitioner to prove that she has rehabilitated herself and that she is entitled to have her license restored or be relieved from further requirements of probation. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. A person seeking reinstatement or penalty relief must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the Board's former adverse determination. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

5. The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California*, *supra*, 49 Cal.3d at p. 1092.)

Relevant Factors in Determining Rehabilitation

6. Petitioner has no other disciplinary record, which is a mitigating factor. (*Segretti v. State Bar of California* (1976) 15 Cal.3d 878, 888.)

7. Rehabilitation is a “state of mind” and the law looks with favor upon rewarding with the opportunity to serve one who has achieved “reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Petitioner has complied with all terms of his probation.

Cause Exists to Grant the Petition and Terminate Probation

8. Petitioner’s medical competence over the past four-plus years has not been questioned and he has demonstrated himself to be a competent, well-liked physician. Respect within the medical community evidences that he is well along in the process of rehabilitation. (See *In re Dedman* (1976) 17 Cal.3d 229, 234.)

9. Cause exists under Business and Professions Code section 2307 and under California Code of Regulations, title 16, section 1360.2, to grant Petitioner’s petition and to terminate the license probation that was imposed by the Board.

ORDER

The petition of Rito Castanon-Hill, M.D. for termination of probation is granted. Physician’s and Surgeon’s Certificate Number A 71843 is fully restored.

Date: October 7, 2016

DocuSigned by:
Carla L. Garrett
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CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings